

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

EDWARD L. TEZAK,

Defendant.

NO. CR03-0370RSL

PLEA AGREEMENT

The United States of America, by and through John McKay, United States Attorney for the Western District of Washington, Kurt P. Hermanns and Floyd G. Short, Assistant United States Attorneys for said District, and the defendant, EDWARD L. TEZAK, and his attorney, Kristine Costello, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C).

1. The Charges. Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter pleas of guilty to the following charges contained in the Superseding Indictment. By entering this plea of guilty, defendant hereby waives all objections to the form of the charging document.

a. Wire Fraud, as charged in Count 13, in violation of Title 18, United States Code, Sections 1343 and 2.

b. Money Laundering, as charged in Count 21, Title 18, United States Code, Section 1956(a)(1)(B).

1 2. Elements of the Offense. The elements of the offense of wire fraud, as
2 charged in Count 13, in violation of Title 18, United States Code, Section 371, are as
3 follows:

4 First, a person made up a scheme and artifice to defraud or for obtaining
5 money or property by means of false or fraudulent pretenses or representations;

6 Second, the defendant knew that the pretenses or representations were false
7 or fraudulent;

8 Third, the false or fraudulent pretenses or representations concerned a
9 material matter;

10 Fourth, the defendant acted with the intent to defraud; and

11 Fifth, the defendant used, or caused the use of, wire communications in
12 interstate commerce to carry out or attempt to carry out the scheme.

13 The elements of money laundering, as charged in Count 21, Title 18, United States
14 Code, Section 1956(a)(1)(B), are as follows:

15 First, the defendant conducted a financial transaction – *i.e.*, a transaction
16 involving the use of a financial institution which is engaged in interstate commerce or the
17 activities of which affect interstate or foreign commerce in any way – involving property
18 that represented the proceeds of wire fraud;

19 Second, the defendant knew that the property represented the proceeds of
20 some form of unlawful activity; and

21 Third, the defendant knew that the transaction was designed in whole or in
22 part to conceal or disguise the nature, location, source, ownership, or control of the
23 proceeds of wire fraud.

24 3. The Penalties. Defendant understands that the statutory penalties for the
25 offenses of wire fraud and money laundering as charged in the Superseding Indictment,
26 are as follows:

27 a. Count 13 (Wire Fraud): imprisonment for up to five (5) years, a fine
28 of up to two hundred fifty thousand dollars (\$250,000), a period of supervision following

1 release from prison of between two (2) and three (3) years, and a one hundred dollar
2 (\$100) penalty assessment.

3 b. Count 21 (Money Laundering): imprisonment for up to twenty (20)
4 years, a fine of up to five hundred thousand dollars (\$500,000) or twice the amount of the
5 criminally derived property involved in the transaction, a period of supervision following
6 release from prison of not more than three (3) years, and a one hundred dollar (\$100)
7 penalty assessment.

8 The defendant understands that in addition to any term of imprisonment and/or
9 fine that is imposed, the Court may order defendant to pay restitution to any victim of the
10 offense, as required by law.

11 Defendant agrees that any monetary penalty the Court imposes, including the
12 special assessment, fine, costs or restitution, is due and payable immediately, and further
13 agrees to submit a completed Financial Statement of Debtor form as requested by the
14 United States Attorney's Office.

15 Defendant understands that supervised release is a period of time following
16 imprisonment during which he will be subject to certain restrictions and requirements.
17 Defendant further understands that if supervised release is imposed and he violates one or
18 more of its conditions, he could be returned to prison for all or part of the term of
19 supervised release that was originally imposed. This could result in defendant serving a
20 total term of imprisonment greater than the statutory maximum stated above.

21 4. Rights Waived by Pleading Guilty. Defendant represents to the Court that
22 he is satisfied with the representation provided by his attorney. Defendant understands
23 that, by pleading guilty, he knowingly and voluntarily waives the following rights:

24 a. The right to plead not guilty, and to persist in a plea of not guilty;
25 b. The right to a speedy and public trial before a jury of defendant's
26 peers;

1 c. The right to the effective assistance of counsel at trial, including, if
2 defendant could not afford an attorney, the right to have the Court appoint one for
3 defendant;

4 d. The right to be presumed innocent until guilt has been established at
5 trial, beyond a reasonable doubt;

6 e. The right to confront and cross-examine witnesses against defendant;

7 f. The right to compel or subpoena witnesses to appear on defendant's
8 behalf;

9 g. The right to testify or to remain silent at trial, at which trial such
10 silence could not be used against defendant;

11 h. The right to appeal a finding of guilt or any pretrial rulings; and

12 i. The right, to the extent required by law, to have sentencing factors
13 charged in the Superseding Indictment and determined by a jury beyond a reasonable
14 doubt.

15 5. United States Sentencing Guidelines. Defendant understands and
16 acknowledges that, absent applicable intervening law:

17 a. The United States Sentencing Guidelines, promulgated by the United
18 States Sentencing Commission, may be applicable to this case;

19 b. Defendant understands the Court will determine defendant's
20 applicable Sentencing Guidelines range at the time of sentencing for the purpose set forth
21 in U.S.S.G. §6B1.2(c); and

22 c. Except as provided in paragraph nine (9) below, Sentencing,
23 defendant may not withdraw a guilty plea solely because of the sentence imposed by the
24 Court.

25 6. Ultimate Sentence. Defendant acknowledges that no one has promised or
26 guaranteed what sentence the Court will impose.

1 7. Restitution. Defendant shall make restitution in an amount set by the court.
2 Said amount shall be due and payable immediately and shall be paid in accordance with a
3 schedule of payments as ordered by the Court.

4 8. Statement of Facts. The parties agree on the following facts in support of
5 defendant's guilty plea and sentencing. Defendant admits he is guilty of the charged
6 offenses and expressly waives any right to have these facts determined by a jury beyond a
7 reasonable doubt.

8 a. At all relevant times EDWARD L. TEZAK ("Mr. Tezak"), formerly
9 a resident of Everett, Washington, was a licensed attorney in the State of Washington and
10 principal of Air Medical Systems of America, purportedly a tax-exempt charitable
11 organization. As of October 2000, Mr. TEZAK was also a director and officer of
12 Goldman Sig, LLC, which was purportedly a lender for the Silver Sound Corporate
13 Center, a private development project of Terry R. Martin.

14 b. In May of 2000, Mr. TEZAK represented to various individuals that
15 he had access to approximately \$20,000,000 in funds from a particular individual.
16 Mr. TEZAK participated in an interstate telephone call with a representative of Goldman
17 Sachs, Private Client Services, referenced in Count 12 of the Superseding Indictment, in
18 which he facilitated the issuance of a letter by that representative affirming the existence
19 of more than \$20 million in assets on deposit. Mr. TEZAK then affirmed the availability
20 of those funds, plus \$43 million in additional private financing, for investment in Mr.
21 Martin's project in two letters dated May 11, 2000. Mr. TEZAK well knew and
22 understood that his representations in those two letters were false and fraudulent. Mr.
23 TEZAK knew or had reason to know that one of the false letters, referenced in Count 13
24 of the Superseding Indictment, was faxed in interstate commerce.

25 c. Prior to Mr. TEZAK's false representations concerning the
26 availability of funding for the Silver Sound Corporate Center, he had entered into an
27 agreement to be paid \$250,000 by Mr. Martin for up to five verifications of financing that
28 he would provide. Pursuant to that agreement, and based on the verification of funds that

1 Mr. TEZAK performed, as described above, Mr. Martin paid Mr. TEZAK \$50,000 for his
2 services on or about October 30, 2000. Mr. TEZAK previously had requested Mr. Martin
3 to make payment to Mr. TEZAK's charitable organization, which Mr. Martin did in the
4 form of a cashier's check. Thereafter, Mr. TEZAK deposited the cashier's check into his
5 brother's account at Western Security Bank in Montana and later directed the funds to be
6 transferred to an account of his purported charity, Air Medical Systems of America, at
7 Rocky Mountain Bank, also in Montana. From that account Mr. TEZAK withdrew and
8 used the funds for a variety of personal purposes. The \$50,000 in funds were derived
9 from the underlying wire fraud scheme, as Mr. TEZAK knew. Mr. TEZAK knew that the
10 transaction was designed for the purpose of concealing the nature, location, source, and/or
11 ownership of the funds.

12 9. Sentencing. Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal
13 Procedure, the parties acknowledge and agree that the appropriate sentence of
14 imprisonment to be imposed by the Court at the time of sentencing should be within the
15 range of zero (0) to eighteen (18) months. If the sentencing court does not adopt the
16 agreement of the parties and imposes a sentencing outside the agreed upon range, both the
17 defendant and the United States reserve the right to withdraw from this agreement
18 pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure and to proceed
19 to trial. No other agreement has been made with regard to the imposition of the sentence
20 in this matter, and the parties understand that the Court retains full discretion to impose a
21 sentence within the range agreed to above. Further, the parties understand that the Court
22 retains full discretion with regard to the imposition of a term of supervised release, the
23 conditions of supervised release, fines, forfeitures or restitution as may be applicable.

24 10. Non-Prosecution of Additional Offenses. As part of this Plea Agreement,
25 the United States Attorney's Office for the Western District of Washington agrees to
26 move to dismiss the remaining counts in the Superseding Indictment at the time of
27 sentencing and not to prosecute defendant for any additional offenses known to it as of
28 the time of this Agreement that are based upon evidence in its possession at this time, or

1 that arise out of the conduct giving rise to this investigation. In this regard, defendant
2 recognizes that the United States has agreed not to prosecute all of the criminal charges
3 that the evidence establishes were committed by defendant solely because of the promises
4 made by Defendant in this Agreement. Defendant acknowledges and agrees, however,
5 that for purposes of preparing the Presentence Report, the United States Attorney's Office
6 will provide the United States Probation Office with evidence of all relevant conduct
7 committed by defendant.

8 11. Voluntariness of Plea. Defendant acknowledges that he has entered into
9 this Plea Agreement freely and voluntarily, and that no threats or promises, other than the
10 promises contained in this Plea Agreement, were made to induce defendant to enter this
11 plea of guilty.

12 12. Statute of Limitations. In the event that this Agreement is not accepted by
13 the Court for any reason, or defendant has breached any of the terms of this Plea
14 Agreement, the statute of limitations shall be deemed to have been tolled from the date of
15 the Plea Agreement to: (1) 30 days following the date of non-acceptance of the Plea
16 Agreement by the Court; or (2) 30 days following the date on which a breach of the Plea
17 Agreement by defendant is discovered by the United States Attorney's Office.

18 13. Post-Plea Conduct. Defendant understands that the terms of this Plea
19 Agreement apply only to conduct that occurred prior to the execution of this Agreement.
20 If, after the date of this Agreement, defendant should engage in conduct that would
21 warrant an increase in defendant's adjusted offense level or justify an upward departure
22 under the Sentencing Guidelines (examples of which include, but are not limited to:
23 obstruction of justice, failure to appear for a court proceeding, criminal conduct while
24 pending sentencing, and false statements to law enforcement agents, the probation officer
25 or Court), the United States is free under this Agreement to seek a sentencing
26 enhancement or upward departure based on that conduct.

27 14. Completeness of Agreement. The United States and defendant
28 acknowledge that these terms constitute the entire Plea Agreement between the parties.

1 This Agreement only binds the United States Attorney's Office for the Western District of
2 Washington. It does not bind any other United States Attorney's Office or any other
3 office or agency of the United States, or any state or local prosecutor.

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5 Dated this _____ day of _____, 2004.

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8 EDWARD L. TEZAK
Defendant

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10 KRISTINE COSTELLO
Attorney for defendant

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12 KURT P. HERMANN
Assistant United States Attorney

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14
15 FLOYD G. SHORT
Assistant United States Attorney